IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3808 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHESH @ ASHOK JIVRAJBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3808 of 2003
MS SUBHADRA G PATEL for Petitioner No. 1
Mr. K.P. Rava., Asst. GOVERNMENT PLEADER
for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/06/2003

ORAL JUDGEMENT

Heard learned advocate Ms. Subhadraben Patel for

the petitioner and Mr. K.P. Raval, learned AGP for the respondents. In this petition, the petitioner has challenged the impugned order of detention dated 14th January, 2003 passed by the Commissioner of Police, Rajkot City. The order of detention has been passed by the said authority under section 3(1) of the PASA Act, 1985 which was executed against the petitioner on 15.1.2003. The petitioner has been detained in Porbandar Jail. This petition was admitted by this court by issuing rule thereon on 4th April, 2003 and it was made returnable on 29th April, 2003.

Looking to the grounds of detention, in all seven offences were registered against the petitioner all of which are relating to section 379 of the Indian Penal Code. Two statements of the secret witnesses were recorded on 12.1.2003 and two unregistered offences were disclosed which are dated 24th November, 2002 and 26th October, 2002. Said statements of the secret witnesses were verified by the detaining authority on 13.1.2003 and on the very next date, impugned order of detention has been passed by the detaining authority. Identity of the secret witnesses was withheld by the detaining authority by resorting to section 9(2) of the PASA Act, 1985. In this petition, the State Government has filed affidavit in reply but the detaining authority has not filed against the present petition.

During the course of hearing, learned advocate Ms. Patel appearing for the petitioner has submitted that the petitioner has challenged the impugned order of detention on various grounds but according to her submission, one contention is enough to vitiate the order of detention. She submitted that at page 17, internal page 4 of the grounds of detention, the detaining authority has considered that the petitioner was in judicial custody at the time of passing of the impugned order of detention in respect of seven offences registered against the petitioner. She submitted that if the person sought to be detained under any preventive law, then, the detaining authority is required to consider two aspects. First aspect is the possibility of preferring an application for bail by such a person sought to be detained and the second aspect is the possibility of grant of bail in the event of bail application preferred by such a person. After making this submission, she specifically submitted that these two aspects have not been taken into account by the detaining authority before passing the impugned order of detention and this has vitiated the subjective satisfaction of the detaining authority and it also shows

non application of mind on the part of the detaining authority and, therefore, impugned order of detention is required to be quashed and set aside. She further submitted that this aspect has been examined by this court in special civil application no. 2866 of 2003; 2867 of 2003 and 2868 of 2003 decided by common oral judgment dated 10th June, 2003 and, therefore, on that ground alone, the impugned order of detention passed against the detenu is required to be quashed and set aside.

As against that, learned AGP Mr. Raval appearing for the respondents has submitted that the activities of the petitioner were prejudicial to the maintenance of law and public order and, therefore, detaining authority was right in appreciating the facts on record and once the petitioner was in judicial custody and if he is released on bail, he may indulge in the similar anti social activities which may disturb the public tempo, peace and adversely affect the society at large and, therefore, detaining authority has rightly passed the order of detention which does not call for any interference of this court in this petition.

I have considered the submissions made by the learned advocates for the parties. The contention raised by the learned advocate for the petitioner has been examined by this court in special civil application no. 2866 of 2003; 2867 of 2003 and 2868 of 2003 decided by common oral judgment dated 10th June, 2003 after relying upon the decision of the Hon'ble Apex Court. In the said petition, the petitioners who were detained under the PASA Act, 1985 were in judicial custody at the time of passing of the impugned order of detention. In the said petitions, the detaining authority has considered the first aspect about the preferring of an application for bail by the petitioners therein after completion of the period of remand but the detaining authority has not considered the second aspect of possibility of grant of bail in favour of the petitioners therein and, therefore, on that ground, the impugned order of detention passed against the petitioners therein was set aside by this court. In the instant case also, the detaining authority has not considered the said two aspects namely the possibility of preferring an application for bail by such a person sought to be detained and the second aspect is the possibility of grant of bail in the event of bail application preferred by such a person before passing the impugned order of detention. This shows non application of mind on the part of the detaining authority while preventively detaining a person under the PASA Act and

while curtailing his liberty. Therefore, on that ground alone, the impugned order of detention passed against the petitioner is required to be quashed and set aside. Therefore, this court is not assigning detailed reasons in this case since the question has been examined by this court in aforesaid three petitions, after considering the decisions of the apex court. Therefore, according to my opinion, impugned order of detention is required to be quashed and set aside.

For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The impugned order of detention dated 14.1.2003 is hereby quashed and set aside. The detenu MAHESH @ ASHOK JIVRAJBHAI SOLANKI who has been detained in Porbandar Jail be set at liberty if he is not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct Service is Permitted.

Dt.11.6.2003 (H.K. Rathod,J.)

Vyas